

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MISSOURI PRIMATE FOUNDATION,     )  
et al.,                                     )  
   )  
Plaintiff,                                 )  
   ) Case No: 4:16-cv-2163-CDP  
v   )  
   )  
PEOPLE FOR THE ETHICAL             )  
TREATMENT OF ANIMALS, INC., et    )  
al.   )  
   )  
Defendant.                               )

**COUNTERCLAIM DEFENDANT CONNIE CASEY'S MEMORANDUM IN SUPPORT  
OF MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER TO  
COUNTERCLAIM**

COMES NOW Counterclaim Defendant Connie Casey, by and through undersigned counsel, and for her Memorandum in Support of her Motion for Leave to File her First Amended Answer, states as follows:

**INTRODUCTION**

The Court should grant Counterclaim Defendant Connie Casey's Motion for Leave to File a First Amended Answer. A timely motion for leave to amend a pleading is to be liberally granted. The proposed amendment merely better specifies affirmative defenses that and are based on theories already at issue in the case. Consequently, there could be no prejudice to any party in granting leaving to file the proposed amendment to the answer.

**BACKGROUND**

Counterclaim Defendant Connie Casey seeks to file a First Amended Answer, pleading certain affirmative defenses with more specificity. The affirmative defenses all relate to

standing, mootness, equitable defenses and/or other theories previously raised and/or otherwise at issue in this case. See Proposed First Amended Answer attached to Motion for Leave as Exhibit A at Affirmative Defenses ¶¶ 17-23. This Court has entered a Case Management Order giving the parties until January 8, 2019 to make amendments to their pleadings. The discovery cutoff in the said Case Management Order is May 15, 2019.

### **DISCUSSION**

Under Fed. R. Civ. P. 15, timely applications for leave to amend pleadings are to be liberally granted. “A district court should freely give leave to a party to amend its pleadings when justice so requires.” Popoalii v. Correctional Medical Services, 512 F.3d 488, 497 (8<sup>th</sup> Cir. 2008) (citing Fed. R. Civ. P. 15(a)). A district court is only justified in denying a motion for leave to amend when there is “unduly delay, bad faith or dilatory motive on the part of the movant, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.” Bell v. Allstate Life Ins. Co., 160 F.3d 452, 454 (8<sup>th</sup> Cir. 1998) (quoting Forman v. Davis, 371 U.S. 178, 182 (1962)). “Delay alone is insufficient justification; prejudice to the nonmovant must also be shown.” Bell, 160 F.3d at 454.<sup>1</sup>

Here, the Motion for Leave to File the First Amended Answer should be granted because there is no basis upon which to deny it. The Proposed First Amended Answer sets forth additional affirmative defenses that do not alter the facts that are already at issue in the case and/or that do not require a change in the course of discovery in the case. The additional affirmative defenses all relate to standing, mootness, equitable defenses, and/or other theories previously raised and/or necessarily at issue in this case. See Proposed First Amended Answer attached to Motion for Leave as Exhibit A at Affirmative Defenses ¶¶ 17-23. They do not

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<sup>1</sup> The Court applies the less liberal “good cause” standard of Fed. R. Civ. P. 16(b)(4) with respect to untimely motions to amend pleading. See Henson v. Casey’s General Stores, 2014 WL 1648812 at \*1-2 (E.D.Mo. 2014).

involve the development of other facts through discovery that would not otherwise be at issue in the case. Furthermore, there is still additional time for any party to conduct any discovery related to the said defenses within the time allowed for discovery under the Case Management Order. Under these circumstances, no party will suffer any prejudice as a result of the amendment.

### **CONCLUSION**

The Court should grant Counterclaim Defendant Connie Casey's timely Motion for Leave to File her First Amended Answer. No party will be prejudiced by the proposed amendment.

WHEREFORE, Counterclaim Defendant Connie Casey prays that this Court grants her Motion for Leave to File her First Amended Answer, and for such other and further relief this Court deems necessary and proper under the circumstances.

RYNEARSON, SUESS, SCHNURBUSCH &  
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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent by email and the Court's electronic filing system on this 8<sup>th</sup> day of January 2019 to:

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